Supreme Court, U.S.
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Case No. 94-1795

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1994

YARDARM RESTAURANT, INC.,

Petitioner,

v.

CITY OF POMPANO BEACH, FLORIDA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL FOURTH DISTRICT OF FLORIDA

RESPONDENT'S BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Respondent refers this Court to several matters not disclosed by Petitioner in its statement of the case, which are relevant to issues of jurisdiction and the timely and proper raising of federal questions.

Petitioner filed its lawsuit in 1987 seeking damages under the Fifth and Fourteenth Amendments for an alleged "taking" by the Respondent, as well as a claim for identical damages pursuant to 42 U.S.C. §1983. Prior to trial, Petitioner's §1983 claims were dismissed through the entry of summary judgment. Petitioner tried its inverse condemnation claim strictly on a "permanent taking" basis, arguing that its entire bundle of property rights had been lost in 1985 allegedly due to acts or omissions of Respondent. The trial court's order (Petitioner's Appendix, A-23) reflects that Petitioner exclusively pursued a "permanent" taking claim. Petitioner did not argue that a "temporary" taking had occurred, primarily because Petitioner's witnesses at trial admitted that its property could have been put to a myriad of economically viable uses other than the 18-story hotel project proposed for the two-parcel site (including, for example, a ten-story hotel). Petitioner in fact voluntarily demolished its lucrative "Yardarm" restaurant on the site in 1977.

The Florida appellate court decision, which Petitioner asks this Court to review, similarly reflects Petitioner's exclusive "permanent taking" theory of recovery. Petitioner has not prosecuted this matter as a "temporary" taking case. As a result, Petitioner did not timely or properly raise in the

courts below its current assertion that conflict exists between principles governing permanent and temporary takings.

Petitioner also fails to alert this Court to the Florida appellate court's handling of Petitioner's §1983 claim which was previously dismissed by the trial court through summary judgment. Because this was an appeal from a non-final order, the Florida appellate court felt constrained to remand this case to the trial court for further proceedings, i.e. to provide Petitioner an opportunity to obtain reconsideration of the summary disposition of its §1983 claim. City of Pompano Beach v. Yardarm Restaurant, Inc., 641 So.2d 1337, 1338-1389 (Fla.4th DCA 1994). The lack of finality in the proceedings below, and in particular the prospect of additional rulings on federal questions, are matters important to this Court's determination of jurisdiction and the propriety of discretionary review.

SUMMARY OF ARGUMENTS

The Petition should be denied because this case does not present a sufficiently concrete factual setting to support a decision of constitutional magnitude by this Court. The evidence considered by the Florida appellate court below, demonstrated that Petitioner was free to put its property to a multitude of permissible uses, and that Petitioner's dispute with Respondent exclusively involved Petitioner's efforts to develop an 18-story hotel on its two-parcel site. Petitioner was always free to erect a 10-story hotel on its property. Further, Petitioner voluntarily demolished its lucrative restaurant operation on its property, a decision which

adversely affected Petitioner's ability to proceed with its 18-story hotel project later. Simply put, this case does not present this Court with a true "taking" claim. Petitioner inappropriately asks this Court to issue an advisory opinion based on hypothetical facts and legal settings, rather than the claims pursued and evidence introduced below.

Petitioner's attempt to create conflict among this Court's "taking" decisions is unpersuasive, and does not support the granting of the Petition. The opinions of this Court cited by Petitioner do not conflict, but represent a progression and continuing clarification of principles governing "taking" claims. Although the Petitioner suggests conflict between opinions involving temporary and permanent claims, Petitioner exclusively pursued a permanent taking claim below. The "interplay" between temporary and permanent taking doctrines was not presented to the trial court, or the Florida appellate court, simply because Petitioner never pursued the argument that a temporary taking had occurred. The Petitioner has injected the notion of temporary takings, for the first time in its Petition, in an obvious attempt to create conflict and confusion where none exist and even though these points were not preserved below. Also for the first time in its Petition, the Petitioner asserts that the alleged permanent taking by Respondent occurred in 1989, although at the trial and appellate court levels, the Petitioner asserted that the "taking" had occurred on October 30, 1985 when, by operation of law, the time expired for Petitioner to reinstate its building permit on one of its two parcels of land. At that time, Petitioner had not even applied for a building permit for its other parcel.

Again, the Petitioner injects matters not previously raised below, this time to suggest that its taking claims did not ripen until 1989. This newly crafted contention serves no useful purpose to Petitioner, however, in view of the fact that Petitioner's complaint was filed two years earlier, at a time when Petitioner obviously believed all elements of its purported taking claim existed in fact. The Petition does not present any logical argument, based on the evidence introduced below, which demonstrates why discretionary review should be granted.

Finally, the Petition seeks this Court's discretionary review of a Florida appellate court opinion which lacks the element of "finality" required under 28 U.S.C. §1257. Respondent questions this Court's jurisdiction to grant the Petition.

I.

THIS CASE DOES NOT PRESENT ANY CONFLICT, OR A SUFFICIENTLY CONCRETE FACTUAL SETTING WHICH WOULD MAKE A DECISION BY THIS COURT NECESSARY

The Petitioner suggests to this Court that a state of confusion and conflict exists among announced principles governing inverse condemnation claims. The Petition is replete with contentions that this Court's pronouncements in recent "taking" decisions have placed these standards in a state of total disarray, leaving litigants and lower courts to fend for themselves in a sea of ambiguity.

Respondent urges, however, that Petitioner's claimed confusion is self-inflicted, and that, in fact, Petitioner through its arguments has sought to create confusion and conflict where none exists, as a device to persuade this Court that certiorari should be granted. This method was employed unsuccessfully by Petitioner when seeking discretionary review by the Florida Supreme Court. Respondent's Appendix, 1a. This Court should not grant the Petition because there exists no need to revisit "taking" issues explored in recent decisions and, in any event, the factual setting presented in this particular case does not provide the Court with an appropriate basis on which to address any perceived need for clarification in the law.

The evidence introduced at trial below, as well as the orders issued by the trial and appellate courts, establish clearly that Petitioner's inverse condemnation claim against Respondent was based solely on a permanent taking theory; Petitioner's complaint loosely alleged an entitlement to full compensation for the loss of use of its property "since 1974 to the present time" and "to full compensation for the total loss of the property itself", (see Respondent's Appendix, 12a ¶7); similarly, the Petitioner in Count II of its complaint sought damages under 42 U.S.C. §1983 "for the total loss of its property by mortgage foreclosure and final taking of its property". (Respondent's Appendix, 12a (Count II, habendum clause).

At trial, Petitioner clearly jettisoned any temporary taking claims, and instead exclusively sought damages for the alleged "final taking" of its property, based on the fact that Petitioner's right to reinstate its building permit (applicable to only one portion of its property) had expired on October 30, 1985. City of Pompano Beach, 641 So.2d at 1382. Petitioner at trial specifically identified October 30,

1985 as the date on which the alleged permanent taking occurred, notwithstanding that Respondent took no action on that date and Petitioner admittedly remained free to put its property to a multitude of permissible uses.

Petitioner did not prosecute this action as a temporary taking claim. The trial court's order determined that a "permanent taking" occurred on October 30, 1985; no finding was made by the trial court that any "temporary taking" had occurred.

At the Florida appellate court level, Petitioner again pursued arguments solely on a "permanent" taking basis, asserting that the Respondent's alleged acts or omissions led to the total loss of its property through foreclosure. City of Pompano Beach, 641 So.2d at 1382, 1384. Petitioner did not appeal the trial court's order and therefore acquiesced to the absence of any finding of a temporary taking.

The Petition likewise demonstrates that Petitioner exclusively pursues a claim for compensation based on an alleged"permanent taking". Petition, at p.16.

A recognition of the permanent nature of the taking asserted by Petitioner reveals the subterfuge which the Petitioner now attempts to utilize to create conflict or confusion among the Court's prior declarations. The Petition suggests the existence of "reigning national confusion on the interplay of temporary v. permanent takings" as grounds for this Court's grant of certiorari. While Respondent contests the idea that such alleged confusion exists, as a threshold matter this case does not present the Court with an appropriate setting in which to reach such issues. Any alleged interplay of the law governing temporary versus permanent takings simply is not

presented by this case, as Petitioner from the trial level through its Petition has only pursued a "permanent taking" claim against the Respondent, thus making any alleged interplay with temporary takings law irrelevant, and any discussion of that interplay unnecessary.

This Court has consistently held that "[g]iven the essentially ad hoc, factual inquiry involved in the takings analysis, ... we have found it particularly important in takings cases to adhere to our admonition that the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary." Pennell v. City of San Jose, 485 U.S. 1, 10, 108 S.Ct. 849, 856 (1988), citing Kaiser Aetna v. United States, 44 U.S. 164, 175, 100 S.Ct. 383, 390 (1979). The Petition inappropriately presents this Court with a hypothetical setting in which to address "temporary" taking issues. The Petition improperly poses to this Court abstract questions of law on which merely advisory opinions are sought. This Court is without power to give advisory opinions, and the established practice of this Court is to refrain from deciding abstract, hypothetical or contingent questions or to decide any constitutional question unless compelled to do so by an actual case or controversy presented. See Alabama State Federation of Labor v. McAdory, 325 U.S. 450, 461, 65 S.Ct. 1384, 1389 (1945). Petitioner employed this tactic of "creating" conflict when it sought discretionary review by the Florida Supreme Court, to no avail. Respondent's Appendix, 1a; Petitioner's Appendix, A-1. The Petition fails to present a justiciable case to this Court for resolution.

Petitioner suggests that the Florida appellate court "ignored" the Fifth Amendment because the Respondent's conduct was allegedly "so bad". Petition, at p.13. No more meaningful comment is offered by Petitioner regarding

alleged error by the court below. In any event, the extent of analysis disclosed by the appellate court in its opinion below dispels that notion.

The Petition merely provides an abstract discussion of recent decisions by this Court which have discussed both temporary and permanent taking claims, arising from both physical invasions, or regulatory actions, by governmental agencies. The Petition fails to tie this analysis into any discussion demonstrating that the Florida appellate court, in reversing the trial court's determination of a permanent taking, contravened any established principles of federal takings law.

A review of the Florida appellate court's opinion (Petitioner's Appendix, A-2) does not reveal a casting aside of established takings principles, but instead a deliberate, insightful and broad examination of opinions of this Court governing "takings" claims and a particularized analysis and application of the unique facts presented in this case. In a nutshell, while the Petition may equate with an abstract law review article providing commentary on the recent decisions of this Court regarding takings, the Petition entirely fails to demonstrate the need or propriety of granting certiorari to address any of the findings of fact or conclusions of law enunciated by the Florida appellate court below.

The appellate court opinion sought to be reviewed demonstrates further that this case presents such unique facts, including those reflecting acts or omissions of the Petitioner itself which led to its ultimate loss of its property, that this Court's issuance of an opinion on the merits of this case would be of little precedential value. In fact, issuing an opinion on the merits of this case would undoubtedly lead to the confusion which Petitioner claims now exists.

The record reflects several crucial facts and circumstances which would render the grant of certiorari unwarranted. For instance, during its on-going dispute with Respondent over permitting issues, the Petitioner voluntarily razed its tremendously lucrative and popular restaurant operation in April, 1977. Petition, at p.3; Petitioner's Appendix, A-4. This fact is extremely significant when considering Petitioner's current claims that there existed no economically viable use of its property other than its proposed 18-story hotel, and that actions or omissions of the Respondent solely caused its financial difficulties and ultimately loss of its property through foreclosure.

In July 1981, Petitioner ultimately received the building permit which it sought, for the eastern portion of its property (the "East Parcel"); this permit remained in effect without interruption until it expired by operation of law on October 30, 1985. In 1981, the Petitioner had purchased a separate parcel (partially encumbered by a long-term lease) across State Road A-1-A (the "West Parcel") ostensibly to attract outside investors to its 18-story hotel project.[1] Although Petitioner obtained plat approval for the West Parcel in 1982, Petitioner never submitted an application for a building permit for the West Parcel prior to the initiation of foreclosure proceedings against the property. City of Pompano Beach, 641 So.2d at 1381.

The Florida appellate court aptly noted that the trial court's final judgment of a "permanent taking" was

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[1] A map of the Yardarm properties (East and West Parcels), and a color-based description of permissible uses for each parcel, was introduced into evidence at trial and is reprinted in Respondent's Appendix, 24a.

erroneous because, at the time final judgment was entered, Petitioner did not own the real property which the Respondent allegedly had "taken". The evidence reflected that the property had been lost through foreclosure to Petitioner's lender, to which Petitioner had granted a mortgage encumbering the East Parcel to permit Petitioner to purchase the West Parcel. Petitioner's Appendix, A-10, A-13.

Briefly summarized, from July 1981 until October 30, 1985, Petitioner held a permit to build on its East Parcel; the lower appellate court recognized that Respondent took no action to interrupt or interfere with Petitioner's ability to build on the East Parcel during this time. Petitioner never applied for a building permit regarding its West Parcel prior to the initiation of foreclosure proceedings by its lender.

The evidence introduced at the trial court below further reflected, and the Florida appellate court noted, that although a myriad of permissible uses applied to the Petitioner's property under Respondent's zoning regulations, Petitioner did not seek approval of alternative uses throughout the entire period since its voluntary destruction of its lucrative restaurant operation on the property. Petitioner's Appendix, A-16 and A-17. Ironically, "hotels" were one of the many uses permitted on Petitioner's properties (see Respondent's Appendix, 24a); the essential dispute between Petitioner and Respondent concerned the height of the hotel proposed by Petitioner.

Regarding the value of its land, the Petitioner at trial was unable to establish any negative impact as a result of any acts of Respondent; in fact, the evidence elicited at trial disclosed that notwithstanding any allegedly obstructive

actions of Respondent which had ceased no later than 1979,[2] Petitioner's property admittedly increased in value from $5 million in 1981 to at least $6.2 million in 1985, and that Petitioner had rejected an offer in 1983 to sell the property for $8 million because Petitioner thought the offer was too low. Petitioner's Appendix, A-19.

These facts not only were central to the Florida appellate court's reversal of the trial court's decision, but are also indicative of the circumstances presented in this case which would render the granting of certiorari ill-advised.

II.

ASSUMING PETITIONER HELD A TAKING CLAIM, PETITIONER FAILED TO ASSERT THAT CLAIM TIMELY; PETITIONER'S RIPENESS ARGUMENTS ARE DISPELLED BY THE PARTICULAR FACTS IN THIS CASE.

Once again, a simple but careful review of the factual unpinnings of Petitioner's claim demonstrates its lack of merit, and consequently reveals the grounds for denying the Petition. The Petitioner provides an abstract review of recent decisions of this Court concerning issues of ripeness and finality, but has failed to demonstrate through factual application that those decisions demonstrate the need for this Court's intervention in this case. Petitioner cites United States v. Dickinson, 331 U.S. 745 (1947), for the established

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[2] See City of Pompano Beach v. Yardarm Restaurant, Inc., 509 So.2d 1295, 1297 ("the complained-of activities took place in 1979 and before").

proposition that piecemeal or premature litigation is to be avoided, and that the acts of government complained of should reach some finality before a takings claim is determined to have ripened. Accord, Pennell v. City of San Jose, 485 U.S. 1 (1988). In the case at bar, the Florida appellate court, in two separate instances of appellate review, determined that all allegedly obstructive acts of the Respondent ceased in 1979, and that Petitioner's building permit for its East Parcel was re-issued in 1981. Petitioner's Appendix, A-22; City of Pompano Beach v. Yardarm Restaurant, Inc., 509 So.2d 1295, 1297 (Fla. 4th DCA 1987).

Petitioner boldly suggests (for the first time) that Respondent's 1989 purchase of the subject property from FDIC (as successor to Petitioner's mortgagee which had obtained title through foreclosure in 1986), see Petitioner's Appendix A-29, is the physical invasion which finally ripened Petitioner's alleged taking claim against Respondent; this argument is pursued by Petitioner notwithstanding that all of Petitioner's interests in its property were lost through the 1986 foreclosure sale, and that any allegedly obstructionist activities of the Respondent ceased no later than 1979. City of Pompano Beach, 509 So.2d at 1297. Indeed, at trial and through intermediate appeal, Petitioner had specifically asserted that its taking claim ripened on October 30, 1985 when by operation of law its right to reinstate its East Parcel building permit lapsed. The trial court adopted Petitioner's position that a total taking occurred as of October 30, 1985. See Petitioner's Appendix, A-10 and A-38; City of Pompano Beach, 641 So.2d at 1381-1382. Petitioner for the first time now asserts an event in 1989 as the point at which its permanent taking claim ripened and from which the statute of limitations on its taking claim began to run. The fact that Petitioner's

complaint was filed in October 1987 (two years prior to the "ripening" event now claimed) reveals the lack of merit to this new theory of ripeness.[3]

Petitioner under the guise of its ripeness discussion attempts to create conflict and confusion between permanent taking cases, and this Court's seminal opinion in First English regarding temporary takings. Petitioner's alarmist queries as to whether First English "abolished" permanent regulatory takings or whether different standards exist between permanent and temporary regulatory takings, add nothing to Petitioner's request for discretionary review of this case; they are merely abstract contentions which expose the Petition's lack of merit. Once again, no conflict or confusion truly exists among those principles; no conflict exists in the case at bar, as Petitioner has consistently pursued a claim asserting a permanent taking only. To the extent any acts of the Respondent amounted to any taking of property from Petitioner, such claims had clearly ripened and would have been justiciable as of July 1979 when all allegedly wrongful acts of the Respondent ceased with regard to Petitioner's then-existing request for a building permit on its East Parcel. There could be no question that any taking claims (temporary or permanent) ripened at that point, and that such claims are now barred. Furthermore, because Petitioner admitted at trial that no temporary takings occurred, and because Petitioner prevailed at trial on a permanent taking basis, any discussions bearing on temporary taking issues are irrelevant.

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[3] The complaint was never amended or supplemented by Petitioner to reflect the 1989 event which is now asserted as the basis of its taking claim!

III.

PETITIONER ARGUABLY HELD A CLAIM BASED ON A DENIAL OF DUE PROCESS, NOT A REGULATORY TAKING, BUT THAT CLAIM IS NOW TIME-BARRED

Based on findings made by the trial court that certain actions of the Respondent were "illegal", "arbitrary and capricious" or "dilatory", Petitioner raises in this Court the question of whether a Fifth Amendment taking claim may be based solely on such findings and notwithstanding the absence of a deprivation of substantially all economic, beneficial or productive uses of the property. The Petitioner cites this Court's decision in Nollan, 483 U.S. 825 (1987), and Dolan, ____U.S.____, 114 S.Ct. 2309 (1994), in an attempt to establish either conflict or a need for clarification on this issue.

Both Petitioner and the trial court confused the elements of a regulatory taking claim with those arguably supporting a due process claim for damages. Petitioner erroneously suggests that no remedy exists for those who are subjected to "arbitrary and capricious" actions of governmental officials, in the absence of a substantial deprivation of use. The Florida appellate court noted otherwise based on established federal decisions under 42 U.S.C. §1983. Both Nollan and Dolan questioned the degree of interference brought about by government regulation; the legitimacy of the government's regulatory interests was not the prime focus of those decisions. Because the legal and factual underpinnings of Nollan and Dolan are dissimilar from the case at bar, this additional request to clarify the law on "takings" is without merit.

This Court in Nollan provided guidance in determining whether a regulation, which is imposed pursuant to a legitimate state interest, nevertheless has "gone too far" in its adverse impact upon private property rights so as to require just compensation under the Fifth Amendment. Nollan introduced the "rough proportionality" test, requiring courts to determine whether an essential nexus exists between the legitimate state interest involved, and the regulatory action imposed; if the nexus exists, the question then becomes one of degree between the regulatory actions and the goal to be accomplished by those regulatory measures. In Nollan, this Court determined that the regulation at issue did not meet even the loosest standard of reasonable impact. In Dolan, finding that a legitimate state interest existed, this Court further discussed the question of the degree of connection between the regulatory measure employed by the governmental agency, and the projected impact on the proposed development.

In both Nollan and Dolan, the legitimacy of the state interest pursued by the governmental entity, did not play a role in this Court's decisions whether or not to uphold the regulatory measures as implemented. In other words, neither of these decisions relate to the narrow issue raised by Petitioner.

Furthermore, the Florida appellate court in this case has already addressed the issue of whether any remedy existed to Petitioner outside of Fifth Amendment protections. Citing the very trial court determinations now raised by the Petitioner, the Fourth District Court of Appeal noted that "[a]lthough speaking in terms of a "taking", the fact findings of the lower court are a classic expression of a denial of due process. The lower court correctly perceived that the law provides a remedy for such conduct, but, unless there is a

deprivation of substantially all economic, beneficial or productive use of the property, inverse condemnation is not the remedy. If an invalid exercise of police power causes damage not amounting to a "taking", the claim is for a violation of substantive due process and the remedy is monetary damages." City of Pompano Beach, 641 So.2d at 1385 (emphasis original) (citing Corn v. City of Lauderdale Lakes, 997 F.2d 1368, 1374 (11th Cir. 1993), cert. denied, _____U.S.____, 114 S.Ct. 1400 (1994); Eide v. Sarasota County, 908 F.2d 716, 720-722 (11th Cir. 1990), cert. denied, 498 U.S. 1120, 111 S.Ct. 1073 (1991)).

Indeed, the Florida appellate court referred to the Third Circuit Court of Appeal's decision in Bello v. Walker, 840 F.2d 1124 (3rd Cir.) cert. denied, 488 U.S. 868, 109 S.Ct. 176 (1988), as an example of circumstances under which a §1983 claim may lie but where a "taking" claim could not be properly asserted. As in the case at bar, the claimant in Bello had merely been denied a particular building permit but retained the right to put its land to multiple alternative uses. City of Pompano Beach, 641 So.2d at 1385 (citing Bello, 840 F.2d at 1128-29, 1131).

Although the Florida appellate court below cast serious doubt as to the viability of any §1983 claim previously asserted by Petitioner below, the Florida appellate court expressly remanded this case to the trial court to provide Petitioner an opportunity to raise the federal question of whether its alleged §1983 claim was also time-barred at the time Petitioner filed suit. However, it is clear from a review of the decisions cited by Petitioner and other relevant opinions referenced by the Florida appellate court below, that the trial court's findings regarding any alleged acts of the Respondent did not invoke Fifth Amendment protections.

IV.

THIS COURT LACKS JURISDICTION OVER THIS CASE, AS THIS MATTER LACKS THE "FINALITY" REQUIRED UNDER 28 U.S.C. §1257(a)

Respondent urges the Court to dismiss the Petition for want of jurisdiction. Petitioner has sought to invoke this Court's jurisdiction pursuant to 28 U.S.C. §1257(a). The opinion of the District Court of Appeal, Fourth District of Florida, which is the subject of the Petition, lacks the element of "finality" required by 28 U.S.C. §1257(a) and this Court's decisions interpreting that statutory grant of jurisdiction.

This Court's lack of jurisdiction over this matter is made clear by its prior decision in San Diego Gas & Electric Co. v. City of San Diego, 450 U.S. 621 (1981), an opinion in fact cited in the Petition. In San Diego Gas, the appellant in pending inverse condemnation litigation sought review of the California Court of Appeal's decision that an owner deprived of beneficial use of his land by a zoning regulation was not entitled to damages for inverse condemnation, but may have been entitled to declaratory relief or a writ of mandamus. Because factual disputes remained regarding appellant's entitlement to mandamus or declaratory relief at the trial level, the California Court of Appeal remanded the case for further proceedings. The appellant in San Diego Gas suggested to this Court that its Fifth and Fourteenth Amendment rights had been violated by the refusal of the California courts to award compensation.

This Court ultimately dismissed that appeal, finding that it was without jurisdiction to hear the matter in the absence of a final judgment issued by the California state

courts. San Diego Gas, at p. 633. This Court noted its disdain toward piecemeal litigation, particularly in the "taking" arena. Ibid.

This Court's want of jurisdiction in the case at bar is made clear by the Florida appellate court's decision to remand this case for further proceedings to address the trial court's prior summary disposition of Petitioner's due process claims under 42 U.S.C. §1983. City of Pompano Beach, 641 So.2d at 1388-89; Respondent's Appendix, 12a (Complaint, Count II). Accordingly, "[i]n such a case, the remaining litigation may raise other federal questions that may later come here." San Diego Gas, at 633.

It is abundantly clear from the record below that the opinion appealed from by Petitioner lacks the essential element of "finality" required to confer jurisdiction under 28 U.S.C. §1257(a). The state appellate court through its opinion requests the trial court upon remand not merely to perform ministerial acts, but also to provide Petitioner the opportunity to obtain reconsideration of the trial court's prior summary disposition of the §1983 claim in light of the appellate court's opinion, City of Pompano Beach, 641 So.2d at 1388-89, in an attempt to reach a truly final decision on the merits of Petitioner's claims. For this reason, this Court lacks jurisdiction, and the Petition must be denied.

CONCLUSION

Respondent respectfully urges this Court to deny the Petition for a writ of certiorari.

Respectfully submitted,

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